Supreme Court, U.S.
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NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1999

In Re: JAMES CONSTANT,

Debtor,

JAMES CONSTANT

Petitioner,

v.

DAVID L. RAY, Trustee;
ADVANCED MICRO-DEVICES, INC.
et. als,

Respondents.

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

James Constant
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Pro-per Petitioner

28 pp

QUESTIONS PRESENTED

Does a federal court have an obligation to actually litigate and finally determine its jurisdiction to void, assign, and sell patents under California state laws when the issue of such jurisdiction is raised by a party?

Can the inferior courts constitutionally decide a case against debtor without actually litigating and finally deciding issues presented to them by debtor for the first time?

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PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Petitioner, James Constant, respectfully prays that a writ of certiorari issue to review the Order of the United States Court of Appeals for the Ninth Circuit entered on 18 June, 1999 holding that since the appeal lacks merit it would not be permitted to proceed.

OPINIONS BELOW

The unpublished order of the Court of Appeals appears in Appendix A to this Petition. The district court's order appears in Appendix B to this Petition.

JURISDICTION

The Court of Appeal's Opinion in this matter was entered on 18 June, 1999. This Court's jurisdiction is invoked under Title 28 USC 1254(1).

STATUTORY PROVISIONS INVOLVED

Bankruptcy Rules 2016(a), 7012(h)(3) and patent statute 35 USC 261 are set forth in Appendix C.

STATEMENT OF THE CASE

This is a 10 year no-asset bankruptcy case in which the trustee sued debtor's wife under California state laws to recover 22 patents for the estate, and in which creditor American Micro-Devices, Inc. (AMD) motioned the court to void, assign and sell debtor's 8 patents under California state laws. The patents were recovered and sold to creditor AMD.

At each stage in the case, debtor made objections that California state laws are not applicable to void, assign, and sell patents because federal statute 35 USC 261 specifically authorizes and regulates these acts. The courts below denied debtor's attempts to intervene and to have his jurisdictional claims actually litigated and resolved on merits, and this Court denied certiorari. A summary is provided as follows: .

Lower Court Decision	SCt Case No.
CA9 92-56475 Court has jurisdiction to assign debtor's patents under California state laws	93-1518 *cert. den.*
CA9 93-56266 (1) debtor lacks standing (2) Court has jurisdiction to assign wife's patents under California state laws	none
CA9 94-55053 (1) debtor lacks standing (2) Court has jurisdiction to assign wife's patents under California state laws	94-782 *cert. den.*
CA9 94-80318 On Appeal Court's motion: Pre-Filing Order	94-1257 *cert. den.*
CA9 96-56122 On trustee's motion: Court Order approving sale of wife's patents	96-1178 *cert. den.*

CA9 94-80318 On debtor's motion to dismiss for lack of authority to void, assign, and sell patents under California state laws: Court invoked Prefiling Order (Appeal lacks merit, not allowed to proceed)	98-1151 *cert. den.*
CA9 94-80318 On debtor's objections to the sale of debtor's patents: Court invoked Prefiling Order (Appeal lacks merit, not allowed to proceed)	98-1972 pending

The trustee spent $176,000 to obtain wife's patents which he sold to respondent creditor American Micro-Devices, Inc. (AMD) for $15,000 and made application for fees. Debtor objected and the district court held that the issues before it are res judicata and collateral estoppel. App. B. The appeal court invoked its Prefiling Order (Appeal lacks merit, not allowed to proceed). App. A. This petition is from that decision.

The basis for federal jurisdiction, in whole or part, in the district court was 28 USC 1338.

REASONS FOR GRANTING THE WRIT

I. The Jurisdictional Issue

At no time during this 10 year case have the inferior courts addressed the substantive issue raised by debtor in above listed cases, namely, whether federal courts have the power to void, assign and sell patents under California state laws, in view of federal statute 35 USC 261 which specifically authorizes and regulates the voiding, assignment, and sale of patents ("debtor's issue")[1]. A federal appellate court has special obligation to satisfy itself not only of its own jurisdiction but also the jurisdiction of the lower courts in case under review. *Bender V. Williamsport Area School District* (US 1986) 89 LEd2d___ 106 SCt 1326.

The court decisions, App. A and B, completely avoid debtor's issue. They focus on res judicata and collateral estoppel of non-identical issues rather than addressing debtor's issue. In his statement of issues before the inferior courts debtor claims lack of jurisdiction and fraud. A party may collaterally attack an earlier judgement on grounds of lack of jurisdiction and fraud. *Martin V. Wilks,* (1989) 109 SCt 2180,2189. Moreover, res judicata and collateral estoppel apply only when the jurisdictional question was actually litigated and expressly decided, not the case here. *Stoll v. Gottlieb* (1938) 59 SCt 134, 305 US 165, 83 LEd 104.

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1 Questions of patent assignments arise under the patent laws. *Crown Die & Tool Co. V. Nye Tool & Machine Works* (1923) 261 US 24, 67 LEd 516, 43 SCt 254. The assertion of federal rights is not defeated under the name of local practice. *Davis V. Wechsler,* 2663 US 22,24. The California Supreme Court has held that California state laws cannot be used to interfere with patent policy and to undermine the patent monopoly. *Farmland Irrigation Co., Inc. V. Dopplmaier.* (Cal. SCt 1957) 48 Cal2d 208, 308 P2d 732, 113 USPQ 88, 66 ALR2d 590.

A review of the judgements in the foregoing list fails to identify the earlier cases in which each identical issue at bar was actually litigated and finally resolved between identical persons. The district court's reference to earlier cases CA9 93-56266 and 94-55053 is misplaced since these decisions held that (1) debtor lacks standing, and (2) Court has jurisdiction to assign wife's patents under California state laws. See App. B at page 18. At no time did the courts actually litigate and finally resolve whether patent statute 35 USC 261 preempts California state laws. The remaining earlier cases avoid the question by invoking the pre-filing order and barring debtor's appeals from proceeding.

It is well established that the inferior courts must be held to a lawful exercise of their prescribed jurisdiction. *Roche v. Evaporated Milk Asso.* (1943) 319 US 21, 87 LEd 1185, 663 SCt 938. It is also well established that whenever it appears by suggestion of the parties or otherwise that a court lacks jurisdiction of the subject matter, the court shall dismiss the action. BR 7012 (h)(3). The statutory jurisdiction of a court, therefore, does not vest in the court until it decides the jurisdictional question raised by any party. The law requires that a court have such jurisdiction only when the statutory requirements are met. The issue of jurisdiction raised by debtor is certainly within the cognizance of the law. The court's decisions, App. A and B, do not address the jurisdictional issue raised by debtor, and the courts have no discretion to waive the requirement for jurisdiction.

It is the assertion of debtor that the requirement for a court's jurisdiction is a requirement imposed on the Judicial Branch by Congress; that the courts lack authority to waive this requirement; that the court's power to deal with issues before it is dependent on its jurisdiction and is totally outside the court's control to forego an examination of its statutory jurisdiction; that the court practice of foregoing an examination of its statutory jurisdiction is in contempt of

Congress; and that the absence of statutory jurisdiction prevents a court from making a decision on all matters before it.

II. Statement of Issues at Bar

The issues in the appeal court as stated in Debtor's Statement of Issues filed 19 May, 1999 recite as follows[2]:

1. Did the trustee employ disinterested counsel?

2. Did the trustee and his general counsel disclose creditor American Micro-Device's, Inc. payment of fees to the trustee's special counsel in their applications for compensation?

3. Was creditor American Micro-Device's, Inc. payment of fees to the trustee's special counsel authorized?

4. Did the trustee's counsel perform the authorized services?

5. Did the trustee and his counsel determine wife's undisputed claim?

6. Were the patents recovered exempt or of minimal value?

7. Was the sale of patents a sham sale?

8. Were trustee's counsel's services either not likely to benefit the estate of debtor or not necessary for the administration of the case?

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[2] The issues in the district court are shown in the district court's order, App. B footnote 2.

9. Did the trustee and his counsel make misleading statements and false declarations in contempt of the Bankruptcy Court's Order Authorizing Trustee to Employ Special Counsel?

10. Were the judgements in the patent adversary case and all judgements in the present bankruptcy case, obtained by the trustee and his general and special counsels, and for which compensation is sought, obtained through fraud in the procurement of judgements and fraud in the administration of justice?

11. Did the trustee and his counsel file frivolous papers for the improper purposes to harass debtor, to cause unnecessary delay, to needlessly increase the cost of litigation, and to subvert justice in the adversary patent case and in this bankruptcy case?

The foregoing issues were raised by debtor in the district court and appeal court for the first time. The court decisions, App. A and B, make no findings and conclusions on debtor's statement of issues. They focus on past issues not relevant to the foregoing issues.

It is well established that the foregoing issues presented for the first time to the inferior courts are justiciable because debtor has standing in his bankruptcy case and because the controversy surrounding the trustee's counsel's applications for fees is ripe having never occurred before this time and, therefore, beyond the inferior court's application of the doctrines of res judicata and collateral estoppel. The constitutional jurisdiction of a court, therefore, vests only for issues in dispute. The Constitution requires that a court have such jurisdiction only when a controversy is present. The issues raised by debtor are certainly within the cognizance of the Constitution. The court's decisions, App. A and B, do not address the issues raised by debtor for the first time, and the

courts have no discretion to waive the requirement for constitutional jurisdiction.

It is the assertion of debtor that the constitutional requirement for a court's jurisdiction is a requirement imposed on the Judicial Branch by the Constitution; that the courts lack authority to waive this requirement; that the court's power to deal with an issue before it is dependent on the controversy presented and is totally outside the court's control to forego an examination of issues before it; that the court practice of foregoing an examination of issues before it for the first time is unconstitutional; and that the absence of constitutional jurisdiction prevents a court from making a decision against debtor.

III. Debtor's Proposed Findings of Facts

The court decisions, App. A and B, failed to rule on findings and conclusions made by debtor in debtor's findings and conclusions attached to his notice of appeal filed 17 May, 1999 to the court of appeals. A trial judge has a duty to carefully consider, weigh and determine the accuracy of the proposed findings, and whether they are supported by the evidence in the record before him. *Continental Connector Corp. V. Houston Fearless Corp.* (CA9 1965) 350 F2d 183, 187. Debtor's proposed findings and conclusions are summarized as follows (citations to evidence omitted):

1. the trustee did not employ disinterested counsel[3].

2. the trustee and his general counsel did not disclose creditor American Micro-Device's, Inc. payment of fees to the trustee's special counsel in their applications for compensation[4]

3. creditor American Micro-Device's, Inc. payment of fees to the trustee's special counsel was not authorized by the bankruptcy court's order authorizing employment of counsel.

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[3] Third party payment creates a conflict of interest that disqualifies professional from being employed. *Re Hathaway Ranch Partnership* (BC CD CA 1990) 116 BR 208. A professional person who has been employed with the court's approval may be disqualified and removed from employment where it is subsequently shown that the professional is not disinterested or that the professional holds or represents an interest adverse to the estate. *Re California Canners & Growers* (BC ND CA 1987) 74 BR 336.

[4] Counsel is required to file applications for compensation when payment is authorized at the expense of the estate. BR 2016(a). See *Collier* Compensation of Officers 330.02[2]. See *Collier* 2016.20 Sanctions for Failure to Comply with Disclosure Requirement citing *Re Park Helena Corp.* (CA9 1995) 663 F3d 877; *Re Eric Alden Lewis* (CA9 1997) 113 F3d 1040; *Re Crayton* (BAP CA9 1996) 192 BR 970,976-981.

4. the trustee's counsel did not perform the services authorized by the bankruptcy court's order authorizing employment of counsel.

5. the trustee and his counsel did not determine wife's undisputed claim.

6. the patents recovered were exempt or of minimal value.

7. the sale of patents was a sham sale.

8. the trustee's counsel's services were not likely to benefit the estate of debtor and were not necessary for the administration of the case[5]. The trustee's counsel's applications for compensation should not be approved for services which did not benefit the estate. Here, the trustee and his counsel spent some 8 years and $176,000 to return wife's patents to the estate. The patents were sold for $15,000 to creditor AMD who paid the trustee's special counsel's fees. The estate did not benefit and the creditors get nothing.

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[5] Reimbursement of expenses may be allowed to the extent that the estate has benefited. *Woods V. City Nat 'l Bank & Trust Co.*, 312 U5262, 61 SCt 493, 85 LEd 820 (1941). In order to be compensable, services provided by a professional must benefit the estate. *In re Xebec* (CA9 BPA 1992) 147 BR 518.

9. the trustee and his counsel made misleading statements and false declarations in contempt of the Bankruptcy Court's Order Authorizing Trustee to Employ Special Counsel. The trustee's counsel's applications for compensation should not be approved for services made in contempt of the Bankruptcy Court's Order Authorizing Trustee to Employ Special Counsel. The App. B reference to this issue is misplaced since the bankruptcy court's order authorizing creditor's counsel as special counsel is not at issue. Here the issue is whether special counsel followed or was in contempt of that order.

10. the judgements in the patent adversary case and all judgements in the present bankruptcy case, obtained by the trustee and his general and special counsels, and for which compensation is sought, were obtained through fraud in the procurement of judgements and fraud in the administration of justice.

11. the trustee and his counsel filed frivolous papers for the improper purposes to harass debtor, to cause unnecessary delay, to needlessly increase the cost of litigation, and to subvert justice in the adversary patent case and in the bankruptcy case.

The court decisions, App. A and B, do not turn on the foregoing facts more fully set forth in debtor's findings and conclusions attached to his notice of appeal filed 17 May, 1999 to the court of appeals.

SUMMARY

That the courts below have failed or refused to resolve the jurisdictional issue over a 10 year period, that the trustee and his attorneys spent $176,000 to obtain debtor's and wife's patents, that wife's patents were sold for only $15,000 to creditor AMD, and that first impression issues are decided by res judicata and collateral estoppel, speaks to the expense, uncertainty, arbitrariness, and corruption of the judicial system. No citizen without assets should be held hostage in bankruptcy for 10 years, by federal judges who can with impunity arbitrarily waive the statutory and constitutional requirements for jurisdiction and arbitrarily apply res judicata and collateral estoppel to first impression issues, so that well paid creditor's corporate lawyers can "practice law" without justice, and so that their large corporate clients can obtain free patent property rights under inapplicable state laws.

By not permitting debtor's grievances to be heard on merits, actually litigated, and finally decided, the courts in this case are in contempt of Congress and the Constitution and have violated debtor's due process and taking of property rights. The violation of debtor's constitutional rights is particularly egregious since the jurisdictional issue underlying this case could have been settled in 1992, the date the issue was first presented by debtor to the courts. See Court of Appeals Case CA9 93-56266.

It is the understanding and belief of debtor that all Federal Judges have executed the Oath of Office required by Article VI of the Constitution binding them to support the Constitution and Laws and this Oath operates on this Honorable Court. It is also the understanding and belief of debtor that it is not uncommon for federal judges to ignore their Oaths in order to preserve their prior bad decisions. See list of decisions, supra. It is within the context of this understanding and belief that debtor would most respectfully

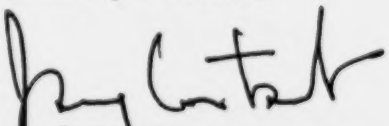
pray that this Honorable Court actually address and finally decide the issues raised by debtor. These issues go to restraining the courts to a lawful exercise of their prescribed jurisdiction and to a lawful exercise of their constitutional duty to finally decide issues presented to them for the first time.

CONCLUSION

For the reasons set forth above, a writ of certiorari should issue to review the Order of the Court of Appeals in this matter[6].

Dated: 27 August, 1999

Respectfully submitted



James Constant
Pro Per Petitioner

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[6] If this Court elects not to address the issues presented in this writ at the present time, it is requested that the writ issue and that the matter be remanded to the Court of Appeals for the actual litigation and final resolution of issues at bar.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
(Ent. 6/18/99)

In re: JAMES CONSTANT,	)	No. 94-80318
	)	DC#CV 98-4923 RSWL
Respondent	)	Central Calif.
	)	
	)	ORDER
_____	)	

Before: O'SCANNLAIN, RYMER and SILVERMAN Circuit Judges

This Court has reviewed the notice of appeal and accompanying documents filed May 17, 1999 in the above referenced district court docket pursuant to the pre-filing review order entered in this docket. Because the appeal lacks merit, it shall not be permitted to proceed.

A certified copy of this order served on the district court shall act as and for the mandate of this court.

No motions for reconsideration, rehearing, clarification, stay of the mandate, or any other submissions shall be filed or entertained in this closed docket.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
(Ent. 5/5/99)

In re: JAMES CONSTANT	)	District Court
	)	Case No.:
Debtor.	)	CV 98-4923 RSWL
	)	
	)	Bankruptcy Court
	)	Case No.:
JAMES CONSTANT,	)	SV 89-19270 KL
	)	
Appellant	)	
	)	
v.	)	ORDER
	)	
DAVID L. RAY, Chapter 7 Trustee; ADVANCED MICRO-DEVICES, INC.,	)	
	)	
Appellees.	)	
	)	

I. INTRODUCTION

Appellant/Debtor James Constant ("Appellant") appeals the Bankruptcy Court's May 28, 1998[1], Order denying his "Motion for Order on Objections to General and Special Counsel's Applications for Compensation". Appellant contends that (1) the Bankruptcy Court lacked jurisdiction over the patents at issue in the underlying adversary action, Case No. LA 91-06842 KL (the "Adversary Action"); (2)

[1] The matter was heard in the Bankruptcy Court on April 14, 1998. (Appellant's App. Ex. L.).

special counsel had a conflict of interest with respect to the representation; (3) special counsel's compensation was paid by Advanced Micro Devices, Inc. ("AMD") rather than the estate as provided by the Bankruptcy Court's Order, and (4) the representation did not benefit the estate[2]. (See Appellant's Br. at 1.) Appellant asks that the Court (1) reverse the Bankruptcy Court's Order denying debtor's objections to general and special counsel's applications for compensation; (2) dismiss the Adversary Action: and (3) cancel the Bankruptcy Court's order to sell the patents at issue in the Adversary Case. (Appellant's Br. at 13.)

This Court has jurisdiction to hear appeals from final judgements, orders, and decrees entered by the bankruptcy court. See 28 U.S.C. 158(a)(l). The Court reviews the bankruptcy court's findings of facts for clear error and its conclusions of law de novo. Fed. R. Bankr. Proc. 8013; In re Fowler, 903 F.2d 694, 696 (9th Cir. 1990).

After reviewing the record in this matter, together with the arguments set forth in the briefs, the court hereby AFFIRMS the Bankruptcy Court's May 28, 1998 Order denying Appellant/Debtor's Motion.

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[2] Appellant articulates the issues on appeal as follows: Do the general and special counsel's applications for compensation cover services: (1) absent jurisdiction by the Bankruptcy Court in the Adversary Proceeding No LA 91 06842 KL over federal patents under 28 USC 1334(e), and jurisdiction to void, assign, and sell patents under 11 USC 544(b), 11 USC 363(f)(1) and under California state laws? (2) performed in contempt of the Bankruptcy Court's Order Authorizing Trustee to Employ Special Counsel? (3)which did not benefit the estate.
(Appellant's Br. at 1.)

II. DISCUSSION

This is not Appellant's first challenge to proceedings in the Adversary Action[3]. Appellant has previously—and repeatedly—challenged the judgement entered in the Adversary Action and the Bankruptcy Court's jurisdiction over the Adversary Action. Appellant's arguments have been previously—and repeatedly—rejected by the Bankruptcy Court, this Court, the Ninth Circuit Bankruptcy Appellate Panel, and the Ninth Circuit. In two 1994 decisions, the United States Court of Appeals for the Ninth Circuit held that: (1) Appellant was not a party to the Adversary Action and is therefore precluded from attacking the judgement in that action; and (2) the Bankruptcy Court had jurisdiction to dispose of the fraudulently transferred patents. In re Constant, No. 93-56266 (9th Cir. Sept. 12, 1994); In re Constant, No.

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[3] The Court notes that Appellant's most recent challenge is at least arguably within the scope of the injunction entered by Judge Real on March 13, 1992, and upheld by the Ninth Circuit, precluding Appellant from

> [f]iling any papers containing claims or allegations against, or naming as a party, ... Advanced Micro-Devices, Inc., ... and David L. Ray, Chapter 7 Trustee, ... without first presenting a copy of this order to the court and obtaining an order of this court approving the filing, including but not limited to, any papers containing any claims or allegations for patent infringement, fraud or conspiracy in connection with ... United States Bankruptcy Court Central District Case Number LA 89-19270 KL.

Constant v. Advanced Micro-Devices, Inc. et al. No. CV 91-5456 (C.D. Cal. March 12, 1992). Appellant sought no such approval.

Appellant is also subject to a PreFiling Review Order entered on October 20, 1994, by the United States Court of Appeals for the Ninth Circuit, which "app[lies] to all notices of appeals and petitions for extraordinary writs filed by [Appellant], in whole or in part, if he proceeds pro se". In Re James Constant, No. 94-80318 (9th Cir. Oct. 20, 1994).

94-55053 (9th Cir. Sept. 12, 1994). Appellant is, therefore, precluded from reasserting these claims in this Court by the doctrines of res judicata and collateral estoppel.

Appellant also contends that: (1) special counsel had a conflict of interest with respect to the representation; (2) special counsel's compensation was paid by AMD rather than the estate as provided by the Bankruptcy Court's Order; and (3) the representation did not benefit the estate. (See Appellant's Br. at 1.) These arguments also lack merit and were, at least in part, previously considered and rejected by the Bankruptcy Court in 1991. (See Appellant's App. Exs. 2,4)

Under the Bankruptcy Code, a creditor's counsel may represent the trustee as special counsel in an action to recover fraudulently conveyed assets for the bankruptcy estate because the creditor's and the estate's interests are complimentary. See In re Fondiller, 15 Bankr. 890,892 (9th Cir. 1981); see also Stroumbos v. Kilimnik, 988 F.2d 949, 964 (9th Cir. 1993). Accordingly, the Trustee was not precluded, as a matter of law, from employing special counsel based upon the firm's representation of AMD, a creditor of debtor.

Moreover, " 'a bankruptcy court's award of attorney's fees will not be disturbed on appeal absent an abuse of discretion or an erroneous application of the law' ". In re Riverside-Linden Inv. Co. 925 F.2d 320,322 (9th Cir. 1991 (quoting In re Nucorp Energy Inc. 764 F.2d 655,657 (9th Cir. 1985) (citations omitted). " '[R]eview under the clearly erroneous standard is significantly deferential, requiring a definite and firm conviction that a mistake has been committed.' " McMillan v. United States, 112 F.3d 1040,1044 (9th Cir. 1997) (quoting Concrete Pi~e & Prods. Inc. v. Construction Laborers Pension Trust, 508 U.S. 602,623 (1993) (quotations omitted); see also In re Mehdipour, 202 Bankr. 474,482 (Bankr. 9th 1996) ("The trial court is in the best position to resolve disputes over professional fees."); In

re Film Ventures Int'l, Inc., 75 Bankr. 250,253 (Bankr. 9th 1987) (upholding payment of fees even though counsel initially failed to disclose fee arrangement).

The Bankruptcy Court convened a hearing to consider Appellant's objections to the applications for compensation, and after hearing oral argument on the issue, denied Appellant's Motion. After reviewing the Bankruptcy Court's decision, together with the arguments of counsel and the relevant law, the Court concludes that the Bankruptcy Court's Order denying Appellant's Motion was neither an abuse of discretion nor an erroneous application of the law.

Appellant's request for leave to file a subsequent motion for sanctions and damages is DENIED. The present appeal lacks merit and repeats arguments that have been fully litigated and finally resolved. Appellant is not entitled to sanctions or damages.

The Bankruptcy Court's Order of May 28, 1998, denying Appellant/Debtor's "Motion for Order on Objections to General and Special Counsel's Applications for Compensation" is hereby AFFIRMED. IT IS SO ORDERED.

RONALD S.W. LEW

United States District Judge

DATED: May 3, 1999

No. CV 98-4923 RSWL [Constant v. Ray, et al. Bankruptcy Appeal] (orders\constant. bkrtcy\ 1)

Bankruptcy Rule 2016(a)

... An application for compensation shall include a statement as to what payments have theretofore been made ...

Bankruptcy Rule 7012(h)(3)
Incorporates Civil Rule 12(h)(3), which provides:

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

35 USC 261 Ownership; Assignment

... patents, or any interest therein, shall be assignable in law by an instrument in writing. The ... patentee, or his assigns or legal representatives may in like manner may in like manner grant and convey an exclusive right under his ... patents,...

An assignment ... shall be void against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it is recorded in the Patent and Trademark Office within three months from the date or prior to the date of such subsequent purchase or mortgage.